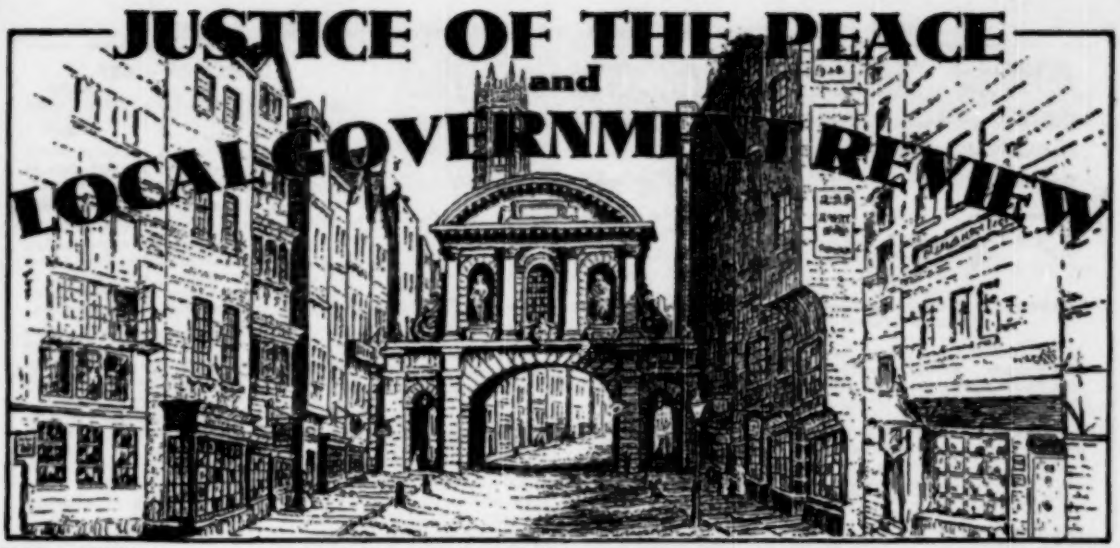

VOL. CXIV. LONDON: SATURDAY, SEPTEMBER 2, 1950. No. 35

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REPORTS

Official Advertisements, Tenders, etc.

Official Advertisements (Appointments, Tenders, etc.), 2s. per line and 3s. per displayed headline. Miscellaneous Advertisements 24 words 6s. (each additional line 1s. 6d.) Box Number 1s. extra. *Latest time for receipt—9 a.m. Wednesday.*

GLOUCESTERSHIRE (COMBINED AREAS) PROBATION COMMITTEE

Appointment of Whole-Time Male and Female Probation Officers

APPLICATIONS are invited for the above appointments. Applicants must be not less than 23 nor more than 40 years of age except in the case of whole-time serving officers.

The appointments will be subject to the Probation Rules, 1949, and the salary in accordance with the prescribed scale.

The successful applicants will be required to pass a medical examination.

Applications, stating date of birth, present position, previous employment, qualifications and experience, together with copies of two recent testimonials must reach me not later than September 16, 1950.

GUY H. DAVIS,
Clerk of the Committee.

Shire Hall,
Gloucester.

ADMINISTRATIVE COUNTY OF KENT

Appointment of Coroner

APPLICATIONS are invited from barristers, solicitors, and legally qualified medical practitioners, of not less than five years standing in their profession, for the position of coroner for the New Romney District.

Salary £30 a year. The conditions of appointment do not contain a requirement precluding the successful candidate from engaging in private practice. Further particulars, including information as to a proposed amalgamation of areas which is expected to affect the appointment, may be obtained from me. Applications must be delivered to me before noon on September 30, 1950.

W. L. PLATTS,
Clerk of the County Council.

County Hall,
Maidstone.
September 1, 1950.

COUNTY BOROUGH OF SMETHWICK

Appointment of Male Assistant to the Clerk to the Justices

APPLICATIONS are invited for the appointment of a whole-time assistant in the Office of the Clerk to the Justices at a salary in accordance with the Clerical Division of the National Scales (£395×£15—£440). Applicants should have general magisterial experience, shorthand, typewriting and ability to deal with collecting officer's work. The post is superannuable. Applications, suitably endorsed, stating age, marital condition, present and past appointments, with full particulars of experience, together with copies of two recent testimonials should reach the undersigned not later than September 9, 1950.

ANTHONY SHAKESPEARE,
Clerk to the Justices.

Law Courts,
Smethwick.

CITY OF OXFORD

Appointment of Assistant to Justices' Clerk

APPLICATIONS are invited for the above appointment from persons experienced in the general duties of a justices' clerk's office, capable of taking courts in the absence of the clerk, able to keep magisterial accounts, court registers and other records, and taking depositions.

Shorthand and typewriting will be an advantage. The salary will be in accordance with the National Joint Council Grade A.P.T. VI, *viz.*, £595—£660 p.a.

The appointment will be subject to one calendar month's notice on either side, and will also be subject to the provisions of the Local Government Superannuation Act, 1937, the successful candidate being required to pass a medical examination.

Applications, stating age, past and present employment, full particulars of experience and the names of two referees, must be received addressed to the Right Worshipful the Mayor, Town Hall, Oxford, by September 11, 1950.

COUNTY BOROUGH OF MIDDLESBROUGH

Appointment of Junior Assistant Solicitor

APPLICATIONS are invited for the appointment of Junior Assistant Solicitor at a salary in accordance with the National Scheme of Conditions of Service, namely :—

(*a*) After admission and on first appointment—A.P.T. Division, Grade V (*a*) (£550-£610 per annum).

(*b*) After two years' legal experience from the date of admission—A.P.T. Division, Grade VII (£635-£710 per annum).

The appointment is permanent, superannuable and subject to the National Scheme of Conditions of Service. Previous Local Government experience is not essential.

Forms of application and terms of appointment may be obtained from the undersigned, to whom they are returnable not later than Wednesday, September 13, 1950.

E. C. PARR,
Town Clerk.

August 19, 1950.

HORNCHURCH URBAN DISTRICT COUNCIL

Appointment of Assistant Solicitor

APPLICATIONS are invited for the appointment of Assistant Solicitor at a salry of £635 per annum rising by annual increments of £25 to a maximum of £710 per annum (Grade VII A.P.T.).

Conditions of appointment and application forms (returnable by September 11, 1950) can be obtained from the Clerk of the Council, Council Offices, Hornchurch, Essex.

The council are not prepared to assist in the provision of housing accommodation.

P. L. COX,
Clerk of the Council.

Council Offices,
Billet Lane, Hornchurch.

COUNTY OF DERBY

Appointments of Clerk of the County Council and Clerk of the Peace

THE Derbyshire County Council invite applications from suitably qualified persons for the office of Clerk of the County Council.

The salary will be £2,250 per annum rising by £100 per annum to £2,750 per annum.

All fees and other emoluments received by the clerk by virtue of his appointment (other than fees for his personal remuneration as Acting Returning Officer at Parliamentary Elections), will be paid into the county fund.

In the event of the successful candidate being subsequently offered by the Court of Quarter Sessions and accepting the office of Clerk of the Peace an additional salary of £750 per annum will be paid.

Forms of application, and particulars of the terms and conditions of the appointment, can be obtained from the undersigned to whom applications should be sent not later than Saturday, September 30, 1950.

Canvassing in any form will be a disqualification.

H. WILFRID SKINNER,
Clerk of the County Council.

County Offices,
St. Mary's Gate,
Derby.

EAST RIDING OF YORKSHIRE COUNTY COUNCIL

Appointment of Assistant Solicitor

APPLICATIONS are invited for the appointment of Assistant Solicitor at a salary in accordance with the recommendations of the National Joint Council, namely, within A.P.T. Grade Va (£550 to £610) for applicants with less than two years' experience after admission, and otherwise, according to experience, within Grades VII and VIII (£635 rising by annual increments of £25 to £760). The appointment will be subject to three months' notice and to the National Conditions of Service as adopted by the County Council. The Local Government Superannuation Act, 1937, will apply, and the selected applicant will be required to pass a medical examination before appointment.

Applications, endorsed "Assistant Solicitor," stating age, qualifications and experience, together with the names and addresses of not less than three persons to whom reference may be made, must reach the undersigned not later than September 30, 1950.

Canvassing or failure to disclose any known relationship to a member or senior officer of the Council will disqualify.

T. STEPHENSON,
Clerk of the County Council.

County Hall,
Beverley.
August 21 1950

INQUIRIES

Justice of the Peace
and
Local Government Review
[ESTABLISHED 1837.]

VOL. CXIV. No. 35. Pages 494-505

LONDON : SATURDAY, SEPTEMBER 2, 1950

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NOTES of the WEEK

A Food and Drugs Point

In *Moore* v. *Ray* [1950] 2 All E.R. 561, the requirements of s. 83 (1) of the Food and Drugs Act, 1938, were explained by the High Court. Justices had had before them a milk retailer for selling milk not of the nature, substance and quality demanded, contrary to s. 3 (1) of the 1938 Act. The retailer took advantage of s. 83 (1) and summoned his suppliers. After hearing the evidence the justices were of opinion that a reasonable doubt existed as to who was responsible for the admitted presence of added water in the milk, and dismissed both informations.

Lord Goddard, C.J., pointed out that in such circumstances once the contravention was proved the retailer was liable to conviction, in spite of proving that the contravention was due to the act or default of his supplier, *unless he further proved* that he (the retailer) had used all due diligence to secure that the provisions of s. 3 were complied with. The effect of bringing in the supplier was that he might be convicted if the default was shown to be his, but his conviction did not necessarily mean the acquittal of the retailer.

Moreover the retailer has no defence under s. 83 (1) unless he satisfies the justices not only that he did not add the water, but also that the suppliers *had* committed the offence. If the retailer cannot prove this then he must be convicted, because he did in fact sell an article to the prejudice of the purchaser and he has not brought himself within s. 83 (1).

The case was sent back to the justices with certain directions in accordance with the provisions of s. 83 (1) as above explained.

A Summons Bad for Uncertainty

Although the case was not decided on this point Lord Goddard, C.J., in *Moore* v. *Ray* [1950] 2 All E.R. 561, took the opportunity " for the guidance and information of Food and Drugs inspectors and clerks to justices " to express his opinion upon what has become a common form of wording in summonses under s. 3 (1) of the Food and Drugs Act, 1938, *i.e.*, for that he did sell to the prejudice of the purchaser an article of food to wit . . . which was not of the nature, substance *and* quality demanded by the purchaser.

Lord Goddard called attention to the case of *Bastin* v. *Davies* [1950] 1 All E. R. 1095 ; 114 J.P. 302, in which the wording was " not of the nature *or* not of the substance *or* not of the quality demanded." The court held in that case that the summons disclosed more than one offence, and Lord Goddard said that in his view the same objection applies if " and " is used instead of " or," and in future clerks to magistrates, sampling officers and inspectors should know that they must state in what respect it is alleged that the offence has been committed.

This opinion was expressed only on the particular section in question, but it appears that the principle of it may apply in other cases, and justices will need carefully to consider when summonses on other matters are worded in the way that this one was whether more than one offence is disclosed. It is important, however, to note that the wording of s. 3 is " any food or drug which is not of the nature, *or* not of the substance, *or* not of the quality of the food or drug demanded."

Other cases arising on s. 10 of the Summary Jurisdiction Act, 1848, are noted in *Stone*, 1950, at pp. 63 and 64.

Rehearing

It is commonplace, that an appeal from a court of summary jurisdiction to quarter sessions is by a rehearing. A curious point arose in *Rugman* v. *Drover* [1950] 2 All E.R. 575 ; *ante*, p. 449. An order under s. 62 (1) (*a*) of the Children and Young Persons Act, 1933, was made by a juvenile court, in respect of a girl who was then just two months below the age of seventeen, the age at which such an order could no longer be made. The order required her to go to an approved school until she was nineteen, and required her father to pay 23*s.* a week towards her maintenance. He appealed, and by the time quarter sessions could hear the case the girl was more than seventeen ; since the original applicant for the order had to begin again, the father argued that the proceedings were too late ; to this argument the appeals committee of quarter sessions acceded. The effect so far was that, by merely entering an appeal, the father put an end to the order appealed against, and there was no hearing at quarter sessions on the merits : a startling result. The Divisional Court took what seems, with respect, the only sensible line, that for the purpose of founding jurisdiction under this section age must be taken at the date of the order appealed against : otherwise a period which might amount to months would for practical purposes be lopped off the age mentioned in the section. The reason why appeal is by way of rehearing was explained by Lord Goddard, C.J., as being that there is no formal record of proceedings in the justices' court. The decision will be helpful, as removing a doubt which might arise in other cases, as well as those under the Act of 1933.

A reflection which occurs to us in passing, arising from this procedural point, is this : if the suggestion were accepted by Parliament, of allowing an appeal from the decisions of tribunals under the Furnished Houses (Rent Control) Act, 1946, would these appeals be by way of rehearing, with the lessee (who has normally started the case) making his case again, even when he has succeeded before the tribunal, the appeal being by the lessor ? A rent tribunal has, no more than a court of summary jurisdiction, a " formal record of proceedings." If Parliament does give an appeal, this procedural matter can no doubt be thought out, but thought out it will have to be, especially since most

appeals will not be upon law or even upon disputed facts, but upon an inference about what is reasonable drawn from those facts.

Second Adoptions

Section 7 of the Adoption of Children Act, 1926, gave power to a court to make an adoption order or an interim order in respect of an infant who has already been the subject of an adoption order. As from October 1, 1950, that section is replaced by s. 7 of the Adoption Act, 1950, by which "an adoption order or an interim order may be made in respect of an infant who has already been the subject of an adoption order under this Act or under the Adoption of Children Act, 1926, or the Adoption of Children (Scotland) Act, 1930." It will be noticed that the application of the section is now restricted to the cases of orders made under the Acts named. The Act, with certain exceptions which are not relevant to this matter, does not apply to Northern Ireland (s. 47), and the question is whether an English or Scottish court can make an adoption order in respect of an infant who has previously been the subject of an adoption order made under the Adoption of Children Act (Northern Ireland), 1929. One finds a number of mentions of the Northern Ireland Act in the Adoption Act, 1950, but none of them has any bearing on this point.

If an application in respect of an infant previously adopted in Northern Ireland comes before an English or Scottish court the problem of obtaining the proper consents under s. 2 (4) will call for careful consideration. The infant's adopters are not his "guardians" as defined in s. 45 and are not his parents, as s. 10 (1) which confers parental rights on adopters does not relate to orders made in Northern Ireland. Oddly enough, s. 10 (3), which relates to capacity to marry, is specifically applied to adoption orders made in Northern Ireland. It therefore looks as if compliance with s. 2 (4) requires the court to obtain the consent of the infant's natural parents, and this would appear to be the case whether or not the adopters are still alive. If one of the adopters is also a natural parent the difficulty may be slightly eased, otherwise the court may have to rely on the powers of dispensing with consents given by s. 3, and even they will not always be available.

Law-abiding Dorset

The report of the Chief Inspector of Weights and Measures for the year ending March 31, 1950, shows Dorset to be, so far as the numerous statutory provisions within the purview of his department are concerned, a very law-abiding county. Only 676 of 56,131 articles checked were found deficient in weight or measure (the figures for another county were some 1,500 out of approximately 65,500); check deliveries of coal and coke show that coal merchants in the county are carefully observing statutory requirements; so far as loads of sand and ballast are concerned it appears that hauliers and merchants also are carefully observing the provision of the relevant Act; adulteration of food and drugs is gratifyingly less than it was pre-war; of twenty-one vehicles checked to see if they were overloaded only two were found to be incorrect (another county showed 230 infringements out of 675 checked).

We will not invite a storm of protests from other counties by seeking to assign any reasons for this happy state of affairs, but, of course, we record it with pleasure.

Truncus Illapsus Cerebro

In the case of *Caminer* v. *Northern and London Investment Trust Ltd.* [1950] 2 All E.R. 486; 114 J.P. 426, the House of Lords has confirmed the decision of the Court of Appeal, reversing Lord Goddard who in the King's Bench Division had found in favour of the plaintiff. The claim was for damages caused to the plaintiff and his wife by the falling of a branch from an elm tree, the real conflict between the plaintiff and the defendant being upon the meaning and weight to be attached to certain expert evidence. Several of their lordships included in their speeches cautionary passages, indicating that the last word was not to be taken as having been said on the subject of the duty of owners of trees. Lawyers (most of whom nowadays live in towns) will find in the speeches of the Lords and the judgments in the Courts below a wealth of information on the habits and eccentricities of elm trees. (Was it an elm that gave Faunus, as guardian of Mercurial men, his opportunity to earn a humble lamb, and supplied the title of this note? The poet does not tell). Naturally, the point which most interests us is the relation of the decision to the position of local authorities. Although the defendants succeeded on the facts, or on the view which the Courts predominantly took on the expert issues involved, the result is to make it clear that owners may in some circumstances be liable for injuries caused by falling trees or branches. A suggestion has from time to time been made to us that there could be some doctrine of non-liability for non-feasance, applying to local authorities as such, in regard to trees upon their property. We never thought the suggestion a good one, either in law or upon merits, and the indications given by their lordships about the common law responsibilities of tree-owners will make it difficult for anybody to put forward such a suggestion in the future. Indeed, although a local authority was not the defendant in this case we think there is enough in the speeches of Lord Reid and Lord Radcliffe to kill the suggestion.

Brake on the Ambulance Service

Press reports of recommendations made in the third report of the House of Commons Select Committee on Estimates seem to convey an erroneous impression of extravagant provision and care-free operation of ambulance services by local health authorities. Doubtless, distance of that impression from the truth varies in different local areas, but not much. Local authorities are as intent as anybody on securing optimum value for expenditure, and the amount and upward tendency of expenditure on ambulance services, incurred in the discharge of the duty imposed by the National Health Service Act, 1946, s. 27, has caused them much concern. Largely, such variations as exist in ambulance services run by different authorities are ascribable more to shadings of enthusiasm and antipathy to the welfare state than to vagaries of administrative efficiency. Believers, for whatever reason, in the welfare state are naturally likely to make more generous initial and current provision for services, especially where, as in the case of ambulances, impact of generous or parsimonious provision is personal to electors.

Reception by local authorities of a suggestion that the Ministry of Health should be able to exercise a more adequate financial control, without imposing any greater degree of centralization, will be accompanied by a sardonic smile in recollection of the detailed guidance towards a "development plan" for an ambulance service, given to local authorities by the Ministry three years ago in the first fine flush of heaven upon earth by statutory enactment. Possibly, the present Parliamentary urge towards a measure of economy is merely a modification of principle found necessary in practice. Probably, knowingly or not, it is recognition that when "free" services come in personal responsibility often goes out, and a paraphernalia of control and check becomes necessary in order to prevent abuses. Provision of services for the masses is much easier to effect than the reasonable use of them.

One method of exercising financial control is open to the Ministry under the Local Government Act, 1948, s. 7 (1), providing for a reduction of the fifty *per cent.* Exchequer grant where the Minister is satisfied that a local authority have failed to achieve or maintain a reasonable standard of efficiency, or that the expenditure of an authority has been unreasonable or excessive. No case is known, or hardly thinkable, of the exercise or threatened exercise of this power, which would require a resolution of the Commons House of Parliament before being acted upon. Considerable auditorial investigation of local circumstances and play of balanced judgment would be necessary before allegations could be sustained that a local authority had gone beyond the generous intentions of a parliamentary majority obsessed with ideas of Utopia attainable by communal luxuriation in the illusion of " free " services.

Possibly, a circular from the Ministry of Health, as recommended by the Select Committee, giving guidance to hospitals and doctors about the use of ambulances, would help to correct some misconceptions that these ancillaries cost little more to provide and maintain than the waggle of a beckoning finger which obtains their use. One difficulty about restriction of " free " services required by the Act of 1946, s. 27, to be provided " where necessary," in circumstances with many hazy borderlines of need and much scope for emotionalism, is that of setting up some sufficiently knowledgeable, authoritative and quick-moving official to ensure that all calls have equally high merits and to determine any which are doubtful.

Rules stipulating cases for which a medical certificate should be required before an ambulance can be called upon would help to the extent that rules-of-thumb can be applied ; the ordering of ambulances through a hospital rather than a doctor sounds as though a doctor may sometimes have to argue a hospital into providing an ambulance or that a hospital will automatically agree with every medical request, in both of which cases the net effect would be a waste of time in reaching a result not very dissimilar from now ; and the suggested appointment of a transport officer in all large hospitals with the duty of co-ordinating all requests for ambulances seems surprising at this comparatively late stage in the operation of the national health service, or to be yet another device conceived as a flexible co-ordinator but a rigid controller when in being. Apparently, there is still a long way to go in educating individuals in the responsible use of services provided from a public purse whose resources must yet be generally recognized to be exhaustible.

BLEMISHING THE PEACE

By G. H. C. VAUGHAN, B.A. (Cantab.), *Barrister-at-Law*

In the vast majority of cases, persons who are bound over to " keep the peace " are at the same time also adjured " to be of good behaviour," and this was the form of recognizance required in many celebrated cases, such as *Wise* v. *Dunning* [1902] 1 K.B. 167, and *Duncan* v. *Jones* [1936] 1 K.B. 218. The two forms of recognizance are in fact, however, quite distinct and severable, and surety to be of good behaviour, or " bond for good abearing " as it is sometimes called in earlier textbooks, is of much wider application than the surety of the peace.

From time to time, perhaps because of its wide and somewhat arbitrary nature, the authority for the power to take surety for good behaviour is called in question. There appears to be some doubt as to its exact source. It is variously ascribed to 34 Edw. III, c. 1 (this is the statute under which " peeping-tom " cases are often brought before justices), entitled : " What sort of persons shall be justices ; and what authority they shall have." It may be of interest to recite the relevant passage :

" First, that in every county of England shall be assigned for the keeping of the peace, one Lord, and with him three or four of the most worthy of the county, with some learned in the law . . . and they shall be empowered . . . to take of all of them that be not of good fame, where they shall be found, sufficient suretyship and main price for their good behaviour towards the king and his people, and the other duly to punish, to the intent that the people be not by such rioters or rebels troubled nor endangered, nor the peace blemished, nor merchants nor others passing by the highways of the realm disturbed, nor put in the peril which may happen of such offenders."

Alternatively, the power is said to derive from the commission of the peace issued under that statute which reads :

" We have assigned you jointly and severally, and every one of you, our justices, to keep our peace, and to cause to come before you, all those who to any one or more of our people concerning their bodies, or the privacy of their houses, have used threats ; to find sufficient security for the peace or their good behaviour towards us and our people ; and if they shall refuse to find such security, then those in our prisons, while they shall find such security, to cause to be safely kept."

Surety for good behaviour is distinguished by *Burns* from surety to keep the peace in that the latter is based upon common law, the former on statute.

A number of interesting questions arise. What is meant by " good behaviour " ? Exactly what type of misbehaviour would be considered to be an infringement of a recognizance undertaking to be of *good* behaviour ? What sort of conduct will be considered sufficient to justify the taking of surety for good behaviour ? Is " misbehaviour " an offence ? If not, what evidence is required and what form do the proceedings take ? Is there any right of appeal from a decision to take the surety ?

It is clear from the remainder of the statute that 34 Edw. III, c. 1, was aimed principally at soldiers lately returned from the French Wars who were wandering about the country in considerable numbers and who, having become " disinclined to labour," were winning their meat by acts of violence or threats of violence and pillage. From this it has been argued that the only misbehaviour for which surety can be required is such as touches and concerns the peace, *i.e.*, " them that be not of good fame " in the statute refers only to them that are suspected of conduct likely to break the peace. Whether this was ever so or not, the statute has long received a much wider interpretation. Thus *Blackstone* in IV Commentaries 256 says : " The other species of recognizance, with sureties, is for the good abearance or good behaviour. This includes security for the peace, and somewhat more . . . Under the general words of this expression, *that be not of good fame*, it is holden that a man may be bound to his good behaviour for causes of scandal, *contra bonos mores* as well as *contra pacem*." The first shading off in this direction can be seen the case of *Sir Richard Croftes* in the Year Books, 2 Hen. VII, c. 2, where a diversity was observed between a breach of the peace and a " breach of the good behaviour "

for, it was said, " the peace is not broken without an affray or battery, but the good behaviour may be forfeited by the number of people a man has, or by their harness or weapons, and the like, although they break not the peace." This is followed some eleven years later by a case in which it was held lawful for a constable to have arrested the plaintiff, with a view to requiring him to find surety for good behaviour, having found him in a bawdy house " kept by one Alice B," to which he frequently resorted, " for it is lawful for every constable to take suspected persons which wake in the night and sleep in the day, *or that keep* suspicious company." One *Lambard*, writing in the reign of James I, justifies this decision, somewhat lamely, by arguing : " for bawdry is not merely a spiritual offence, but mixed and sounding somewhat against the peace of the land." And he goes on to suggest from this that surety for good abearing might " at this day " be rightly required " against him that is suspected of having begotten a bastard child, to the end that he shall be forthcoming when it is born ; for otherwise there shall be no putative father found, when the justices shall, after the birth, come to take order for his punishment."

Others from whom it was considered surety for good behaviour could be required include, by the reign of James I : " one who mixed ratsbane with corn and cast it among his neighbour's fowls, whereby most of them died," " suspected persons who live idly, and yet fare well, or are well-apparelled having nothing whereon to live ; unless upon examination they shall give a good account of such their living," " common gamesters, especially if they have not whereon to live," " such as raise hue and cry without cause." *Hawkins* said that he had heard it agreed in the King's Bench that the author of a writing " full of obscene, ribaldry without any kind of reflections upon anyone " could be bound over to be of good behaviour as being " a scandalous person of evil fame."

The commonest ground for requiring this security nowadays would seem to be that of " eavesdropping." The " eavesdrop " is the area of ground which is liable to receive the rainwater thrown off by a building, and " to eavesdrop " is to stand within the " eavesdrop " of a building in order to listen to secrets, and hence, more generally, to listen secretly to private conversations. The eavesdropping which most usually finds its way into the courts is that of peering into the windows of private houses—usually at night—and, occasionally, the wrongful observance of the embraces of courting couples. It can hardly be denied that such actions do indeed " blemish the peace," though they are a far cry from the marauding ex-soldiers of Edward III's day.

An interesting case in which the accused was charged with " acting in a manner likely to cause a breach of the peace contrary to stat. (1360-1) 34 Edw. III, c. 1, by eavesdropping," is *R.* v. *London Quarter Sessions* [1948] 1 All E.R. 72. The magistrate struck out the words " by eavesdropping " because he did not consider that the accused's action could fairly be so described, but found that he had acted in a manner whereby the peace was blemished, and bound him over in the sum of £25 in his own recognizances to be of good behaviour for twelve months. The defendant appealed to London Quarter Sessions against this decision, and the Commissioner of Metropolitan Police moved a divisional court consisting of Lord Goddard, C.J., and Humphreys and Atkinson, JJ., for an order of prohibition forbidding London Sessions from hearing the appeal.

Lord Goddard pointed out that it was elementary law that where an order was made or a judgment given by a court of competent jurisdiction, an appeal did not lie to any court unless it was expressly given by statute. Appeals from magistrates sitting as a court of summary jurisdiction were governed by three statutes : the Summary Jurisdiction Act, 1879, s. 19 ; the Criminal Justice Administration Act, 1914, s. 37 ; and the Criminal Justice Act, 1925, s. 25. In every case, he said, a conviction was necessary before there could be an appeal. But 34 Edw. III, c. 1, did not create any offence, though for many centuries justices had bound over persons whose conduct they considered to be mischievous or suspicious, but which did not, by any stretch of the imagination, amount to a criminal offence. So far as he was aware there was no instance in the books of any person being convicted of eavesdropping or night walking, nor was there any offence known to the law as " blemishing the peace." Prohibition was accordingly issued. Atkinson, J., however, dissented from this judgment holding that the accused had been convicted of an offence, because a finding that he had " blemished," *i.e.*, endangered the peace, exposed him to punishment.

In the 'eighties there were a number of cases, of which *Reynolds* v. *Justices of County Cork* (1882) 10 L.R. Ir. 1, is a typical example, arising from the activity of an Irish organization known as the National Land League. The sheriff in the case referred to, who was " protected by a large force of police," arrived at the house of one Catherine Murphy, a tenant of the Earl of Bantry, to eject her for non-payment of rent. On their arrival a Miss Reynolds, who was surrounded by a large crowd of people, said to Mrs. Murphy : " Pay no rent to the landlord. We will make you right about the land. We will build you a house at any expense and make you comfortable for the winter." Complaint was laid that she had aided and abetted an unlawful conspiracy for preventing the payment of all rent by inducing Mrs. Murphy not to pay rent to the Earl of Bantry, and she was also later charged with unlawfully inciting Catherine Murphy not to pay rent lawfully due, and required to show cause why she should not be bound over with solvent sureties to be of good behaviour for twelve months, or in default be committed to prison. The first charge was withdrawn, but she was required to find sureties on the second and committed to prison in default thereof. The Irish Provisional Court refused to quash the order, saying that a wide and liberal interpretation had been given to 34 Edw. III, c. 1, and the various instances given in the books were " comparatively innocent when contrasted with the conduct of the respondent brought under our notice."

Misbehaviour may consist in inciting others to acts of violence. Thus in *Lansbury* v. *Riley* [1914] 3 K.B. 229, the appellant was a supporter of the Women's Social and Political Union, which was an organization aiming at the securing of votes for women by what was termed " militancy," *i.e.*, the damaging of letters in post-boxes, the breaking of plate-glass windows, the damaging of grass on golf links, etc. At meetings of the Union he was heard to urge the members to continue to break the law. He was bound over to find sureties for his good behaviour, with the alternative of a prison sentence.

Libellers may be bound over, although it is the person libelled who may be considered to be likely to commit the breach or to misbehave. *Haylock* v. *Sparke* [1853] 1 E. and B. 471, for libels and defamation " tend to the breach of the peace and the effusion of blood." A very recent example of the exercise of this power occurred before the Leeds Stipendiary Magistrate on May 24, 1950, when one Kraggs, a labourer of Pudsey, was summoned under 34 Edw. III, c. 1, as " a disturber of the peace " by having published a defamatory libel concerning Major James Milner, M.P. for South-East Leeds and Deputy Speaker of the House of Commons, in a letter addressed to Major Milner. The libel was also said to have been published to Sir Charles Davies. Kraggs was bound over to be of good behaviour, prosecuting counsel pointing out that no criminal offence was alleged.

AD OSTIUM ECCLESIAE

Every student knows that the Ecclesiastical Courts Jurisdiction Act, 1860, deprived those courts of certain powers over laymen, but how many lawyers could off-hand advise a client what new offences, if any, were created by the Act, and what powers were thereby conferred on the police? This reflection is prompted by a Kentish case reported in a London newspaper, where a man and woman "pleaded guilty to improper behaviour"—a reporter's fantasy, for the law knows no such plea—"in" a parish church, contrary to the Act of 1860—more likely we suppose, in the porch, for the offence took place at midnight when the church would surely be locked up. The couple were seen by a constable who flashed his torch upon them, having possibly heard some noise and suspected an attempt at church-breaking.

In imposing on each defendant the maximum sentence of two months' imprisonment, which is heavy for persons who as was stated had no previous convictions, the bench may not unnaturally have been swayed to some extent by a feeling of repugnance, which many will share who are not active practitioners of religious rites, for "indecent behaviour" on church premises. That this, and not, as stated in the newspaper, "improper behaviour," must have been the offence charged, is evident upon reference to the Act of 1860, for it is the only offence named in the Act which fits the facts.

Whilst no widespread sympathy is to be expected for the two defendants, it is from a lawyer's point of view, and perhaps also from the standpoint of a rational theory of imputability, a little unfortunate that they pleaded guilty, thus making conviction practically certain. Had they not done so, and especially if they had been legally represented, the bench might or might not have convicted, and, whichever happened, a case might have been stated upon what seems to us far from an unarguable point of law, on the meaning of s. 2 of the Act of 1860.

That section says that any person guilty of riotous, violent, or indecent behaviour in any cathedral, church, or parish or district church or chapel of the Church of England, or in any chapel of any religious denomination, or in any place of worship duly certified, whether during the celebration of divine service or at any other time, or in any churchyard or burial ground, shall be liable to a fine up to £5 or imprisonment up to two months. The penalty also applies to offences, set out with a verbosity we have not reproduced, by way of molesting or interrupting preachers and others in the performance of their duties.

Now, the word "indecent" has no precise significance; by etymology, it is the opposite of "decent," as occurring in the phrase "decently and in order": that is, it means "unbecoming" and no more. In *Worth* v. *Terrington* (1845) 9 J.P. 346, Alderson, B., said that a song from an oratorio would be quite correct and proper "on such an occasion" (words which seem to be looking to the argument of Serjeant Byles, that assemblies might lawfully be held in churches for other purposes as well as worship), but that such a song would not be "correct and proper" during divine service. "You must therefore," said Baron Alderson, "read the expression 'indecent' as meaning 'under such and such circumstances'." The case was not upon any statutory provision, but was an action for assault against churchwardens and constables, who had forcibly removed the plaintiff from a parish church on Sunday and locked him up till Monday. They justified by saying that he had gone into the clerk's desk, while the congregation was assembled but before the service had begun, and had made divers loud noises, reading and singing in a loud, noisy and unbecoming manner, and otherwise conducting himself in an indecent, irreverent, and unbecoming manner. The "otherwise" is not particularized, but the only reasonable inference is that the plaintiff, Worth, like the plaintiff in an earlier case of *Burton* v. *Henson* (1842) 10 M. & W. 105, cited by counsel for the churchwarden, was claiming the office of parish clerk and emitted his divers noises by way of asserting his claim. To behave indecently in the specialized modern sense would be the last thing he would have done with such an object. Yet the leading judgment of Parke, B., makes it clear that the plaintiff succeeded because the common law power of the churchwarden, to remove persons improperly behaving, arose only during service; if the churchwarden had waited a short time, and Mr. Worth had refused to leave the clerk's seat and gone on with the same behaviour after the service had begun, the Court would not have hesitated to accept the defendant's plea in which indecent conduct was alleged. This decision of the Court of the Exchequer in 1845 must have been in the mind of the draftsman of the Bill for the Act of 1860, and we think a strong argument could be constructed for saying that the adjective "indecent" in that Act is primarily to be interpreted in the light of its context, and was not intended by Parliament to apply to such facts as were proved in the Kentish case.

We are far from saying that fornication or its preliminaries in or in the precincts of a place of worship can not be "indecent behaviour" punishable under the section. We have no doubt that it could be, if committed whilst religious ceremonies were proceeding, in a place where it might be seen by the worshippers, for it would disturb them as profoundly as brawling or violence. By parity of reasoning it might be so held, even when no such ceremonies were proceeding, if it took place at a place where and at a time when it could be seen by persons having occasion to visit the building or its precincts. But, apart from public footpaths through a churchyard, watch-night services, and so forth, a churchyard or burial ground is not a place where members of the public have a right to go at night.

The Kentish constable who discovered the fornicating couple was, no doubt, in the churchyard in the course of duty, but it was midnight, and he would not have seen what they were doing if he had not flashed a torch on them. Fornication is not, as such, an offence cognizable in courts of summary jurisdiction; that is to say, it is not such an offence when committed in a private place, or, for the matter of that, in a public place unless in such circumstances that one of the specific statutory offences of indecency can be proved. We think that in s. 2 of the Act of 1860 Parliament meant, against conduct such as that of Mr. Worth, to give a better remedy than the physical removal under common law powers which Mr. Terrington to his cost attempted, or the spiritual penalties for brawling, fighting, and so forth in churches and churchyards which by the 5 & 6 Ed. 6, c. 4, could be imposed even on a layman by an ecclesiastical court, before the Act of 1860. That it was this, and not punishing indecency in the modern, specialized, sense of letting persons see certain portions of the human body, at which s. 2 was aimed, seems to be suggested also by comparing ss. 2 and 3 with the law applying in 1860 elsewhere than on church premises.

Indecent exposure of the person in a public place to many persons is a common law misdemeanour: *R.* v. *Sidney* (1663) 1 Sid. 168; *R.* v. *Crumden* (1809) 2 Camp. 89, the case of the bathing soldiers: so also, in a place not public, if in fact visible to several persons: *R.* v. *Thallman* (1863) 27 J.P. 790; *R.* v.

Wellard (1884) 49 J.P. 296. Not so, even in a public place, if visible to one person alone: *R.* v. *Watson* (1847) 11 J.P.N. 868. But for the common law offence the remedy is indictment. Wilful, open, and obscene exposure of the person with intent to insult a female became punishable on summary conviction by the Vagrancy Act, 1824. Where this intent cannot be proved, wilful and indecent exposure of the person can be prosecuted summarily if it takes place in any street (which has an extended meaning) to the obstruction or annoyance of residents or passengers, in an area where s. 28 of the Town Police Clauses Act, 1847, is in force. For each of the two last named offences, that is, under the Acts of 1824 and 1847, constables have a limited power of summary arrest. But even today s. 28 of the Act of 1847 is not in force in rural districts, unless put in force by order of the Local Government Board or Minister of Health. It is in force in all municipal boroughs and urban districts by incorporation with s. 171 of the Public Health Act, 1875, but in 1860 its field was very much narrower. It had up to 1858 been in force in those areas only where it was put in force by special Act. By s. 44 of the Local Government Act, 1858, it was incorporated and put in force in the areas of local boards or improvement commissioners under that Act or the Public Health Act, 1848. When we spoke above of a limited power under s. 28 of the Act of 1847, of summary arrest, what we meant was that the constable can only arrest thereunder when he actually sees the offence.

Geographically, the operation of the section, with this power of arrest, was very limited under the Act of 1858. Yet two years later s. 3 of the Ecclesiastical Courts Jurisdiction Act, 1860, gave a power of apprehension "immediately and forthwith" not merely to a constable, but also to any churchwarden of the parish. This power to the churchwarden is a re-enactment from the 1 Mar. session 2, c. 3, where it applies to persons disturbing preachers, damaging church ornaments, and so forth. These powers of s. 3 make sense if the words "indecent behaviour" in s. 2 are construed in a general sense, conformably to the remainder of the section, the sense attached to them by the Court of Exchequer in *Worth* v. *Terrington, supra*. The powers of summary arrest in s. 3 would be extremely odd, so soon after s. 44 of the Local Government Act, 1858, if in 1860 Parliament had been thinking of "indecency" in the popular sense, anatomical or sexual. Section 3 thus strengthens our opinion that in s. 2 the meaning of the word is to be discovered from its collocation with riotous and violent behaviour.

PROBATION PROBLEMS

By F. G. HAILS

The Criminal Justice Act, 1948, amended the law relating to the probation of offenders, and in particular laid down the procedure to be followed where an offender lives, or intends to live, in a district other than that of the court which made the order. The instructions are plainly set out in the latter part of s. 3 (6), which says that when a probation order is made, to be supervised by another court, the court which makes the order shall "send to the clerk to the justices for the petty sessional division named in the order a copy of the order, together with such documents and information relating to the case as it considers likely to be of assistance to the supervising court." The writer is in a position to see how this is being interpreted, being clerk to a petty sessional division which contains a probation hostel, and he thinks that this injunction is honoured more in the breach than in the observance, for in the majority of cases which are sent to the hostel all he receives is a copy of the probation order. This is insufficient to enable any question about the probationer to be decided either by the case committee, or by the justices on those occasions, fortunately rare, when residents of the hostel are brought before the bench, and moreover it is astonishing that such a forthright instruction should be ignored so blatantly. In some cases, it is true, the letter enclosing the order says that the documents are being sent from the one probation officer to the other: this, by no means universal, is better than nothing, but it does seem as if many clerks are neglecting their duties, and leaving the decision as to what is to be sent to probation officers. It may be that these officials are better qualified to judge what will assist the supervising court, but the legislature has seen fit to place the onus on the court, and it is clear that the proper official to communicate on behalf of a magistrates' court is its clerk, and in any event the clerk of the supervising court has the responsibility of receiving the documents in the first place.

Even when documents are forwarded their nature varies: in some cases there is merely a probation report, in others this is supplemented by educational reports, whilst in the rare case the supervising court is put in full possession of all facts by either an explanation in the clerk's letter with the probation report, or a copy of the notes of the hearing before the magistrates. This last course is ideal, as the supervising court is then in possession of all the facts which led the original court to make the order, and if it is conscientious in its duty any further treatment of the probationer should be a logical continuation of the original order. It should be borne in mind that the particulars of the offence contained in the probation order gives very little idea of what actually happened, and although probation reports are explicit in their description of details of the offender and his family, they do not always give information as to the circumstances of the offence.

This is one aspect in which the provisions of the 1948 Act seem already to be falling into disuse; another is the neglect of the powers given by s. 8 (7) to any summary court to deal with a probationer from another summary court found guilty before it of another offence. It will be remembered that under the Probation of Offenders Act, 1907, the power to deal with the probationer for a further offence, as well as for any other breach of his recognizance, was vested in the court which made the order, and in order to avoid the inconvenience of bringing him back to that court after conviction elsewhere the practice of taking the breach into consideration was adopted, and was approved in the case of *R.* v. *Tarbotton* [1942] 1 All E.R. 198. Doubts as to whether this procedure remains today effective were expressed in *Tudor Rees and Graham on the Criminal Justice Act*, 1948 (pp. 48-50), and these authorities draw attention to the fact that the decision in *R.* v. *Nicholson* [1947] 2 All E.R. 535, shows that where an offence is taken into consideration no conviction or sentence for that offence is involved, and that therefore the probation order would remain in force where the matter is not specifically dealt with as a separate matter. It will be remembered that the 1948 Act, s. 5 (4), provides that where a probationer is sentenced for a breach, or for the commission of a further offence, the probation order ceases to have effect: it is desirable that this should be borne in mind.

There is, moreover, the effect on the accused. He has been told, when the probation order was made that "if he fails to comply therewith or commits another offence" he will be liable to be sentenced for the original offence (1948 Act, s. 3 (5)). When he comes before the court during the term of probation,

and the order is treated as if it meant nothing, or at all events very little, instead of the very thing he was told would happen actually taking place, is it to be wondered at if he, in future, regards probation as a matter of no consequence, and what is more, communicates his belief to others?

Probation is a serious matter: the machinery of the law has been improved so that its breach can be speedily and locally dealt with, and it is submitted that that machinery should be used. It should not be allowed to rust away for lack of the energy to learn its use.

COMPULSORY ACQUISITIONS—INTEREST ON COMPENSATION MONEY

[CONTRIBUTED]

Upon completion of a purchase by a local authority of land which is subject to a compulsory purchase order the question arises, where there has been no entry on the land by the authority before completion, whether the owner is entitled to interest on the compensation money, and if so the date from which it may be claimed.

The following example may illustrate the extent to which this question may affect an owner of land. In 1946 a local authority made a compulsory purchase order under the Housing Act, 1936, in respect of a large area of land. For various reasons it was not until 1949 that the land was actually acquired, although notices to treat were served soon after confirmation of the order. One plot was owned by a building company with a view to future development and at no time had it been occupied nor had the local authority entered upon the land. The owner company on completion complained that from the date of the making of the order it had been unable to pursue its plans for development, and had been deprived of any benefit from the land. Consequently interest was claimed from the date of the order, and the sum involved was substantial. The owner's solicitors quoted in support of the claim the case of *Merrett* v. *Hemel Hempstead R.D.C.* (1947) L.J.N.C.C.R. 269. The claim was resisted for the following reasons and ultimately withdrawn. In the *Merrett* case the learned County Court Judge applied the principle of *Fletcher* v. *L. and Y. Railway Co.* (1902) 66 J.P. 631, and found that from the date of the order the owner's rights of sale over his land were "frozen" and that he should be paid interest from that date until he received his purchase price.

The facts in the *Fletcher* case were peculiar. The plaintiffs were, at the time of the service by the defendant railway company of a statutory notice relating to minerals, entitled to work a productive seam of coal. The service of the notice deprived them of the right to continue the working as from a certain date, from which date the railway company was held to have enjoyed the seam of coal by way of support, and, in effect, to have been in possession thereof.

The principle thus evolved in this case is that, where the enjoyment of land is by virtue of an enactment, order, or the like transferred from the owner, he is entitled to interest from the date of the transference. But does this principle apply when a compulsory purchase order has been made and there has been no entry upon the land before completion?

The making of the order, it is submitted, does not deprive the owner of the enjoyment of the property. He may, for example, continue in beneficial occupation or let the land. Nor indeed does the confirmation of the order by the appropriate Minister or the service of a notice to treat deprive him of the enjoyment of the property. He may even sell his interest in the land subject to the notice to treat, providing he does nothing which would have the effect of increasing the burden of the acquiring authority: *Cardiff Corporation* v. *Cook* (1923) 87 J.P. 90. As Romer, J., put it in that case: "the right of a land owner to deal with his property after a notice to treat is recognized, but the right cannot be exercised in such a way as to increase the obligations of the company"—the company being of course the acquiring authority. It is not until the notice to treat has been served and the compensation has been agreed that the owner's rights of sale over the land are "frozen." At this stage there is in effect a contract between the parties of which specific performance would be granted, and in equity the relationship of vendor and purchaser is deemed to have been created. There need be no delay in reaching this stage, for after service of the notice to treat either party may call for assessment of the compensation and completion of the purchase: *Tiverton Railway Co.* v. *Leesemore* (1884) 9 App. Cases at page 493; 48 J.P. 372.

It is suggested therefore that in the *Hemel Hempstead* case the Judge wrongly applied the principle evolved in the *Fletcher* case, and the County Court decision should not be relied upon by solicitors acting for an owner as an authority for claiming interest from the date of a compulsory purchase order.

Reference to this case can be found in P.P. 1 at 112 J.P.N. 282, and P.P. 1 at 112 J.P.N. 815. In the answer to the latter the comment is made that this decision has been doubted, and until the point has been taken higher its validity must be regarded as uncertain.

Where there is no entry on the land before completion the date from which interest is payable appears to have been settled in *Re Pigott and the Great Western Railway Company* (1881) 18 Ch. D. 146. This case established the principle that, when the notice to treat has been served and the compensation fixed, the ordinary rules as between vendor and purchaser apply to the contract which is thus created. If the parties agree a date for completion interest will run from that date, otherwise it will be payable from the date on which the acquiring authority as an ordinary purchaser might prudently have taken possession supposing it had been offered, that is, the time when a good title is shown. An illustration of this may be seen in *Re Keeble and Stillwell's Fletton Brick Co.* (1898) 78 L. T. 383 where an abstract of title was delivered on October 22, and the Court allowed the purchaser until November 1, for verification, and held that interest was payable from the latter date.

So far we have been dealing with the payment of interest where there has been no entry upon the land. Where, after due notice, entry has been made upon the land before completion under s. 145 of the Housing Act, 1936, or para. 3 of Part I of sch. 2 to the Acquisition of Land (Authorization Procedure) Act, 1946, interest is payable by virtue of s. 85 of the Land Clauses Consolidation Act, 1845, on the agreed compensation from the date of possession. The rate of interest is that prescribed by regulations and is at present 3½ *per cent.*: *see* the Acquisition of Land (Rate of Interest on Entry) Regulations, 1947 (No. 791).

It is sometimes suggested that interest runs from the date of service of the notice of entry or the date of expiry of the notice but in view of s. 85 of the 1845 Act, which reads "together

with interest thereon . . . from the time of entering on such lands until the compensation or purchase money is paid . . . ," it appears that interest runs from the date of actual entry.

From the date when interest is paid the acquiring authority have the right to any rents and profits due to the owner. In the answer to P.P.I. at 111 J.P.N. 744, the opinion is expressed that entry on any part of the land constitutes entry on the whole, and consequently interest will be payable on the whole of the compensation although possession of part of the land only has been taken.

A position similar to that arising under compulsory purchase orders has now been created by s. 19 of the Town and Country Planning Act, 1947. By virtue of subs. (2) of that section, on confirmation of a purchase notice by the Minister, the authority concerned shall be deemed to be authorized to acquire the property in accordance with the provisions of Part IV of that Act, and to have served a notice to treat on such date as the Minister directs. Liability for interest will therefore, be determined as if the property was subject to a compulsory purchase order. J.R.F.

CHIEF CONSTABLES' ANNUAL REPORTS, 1949

(*Continued from p. 459 ante*)

36. CITY OF BRADFORD

The population is 298,692 and the area 25,526 acres. Home Office approved strength is 556 men and five women. At the end of the year there were sixty-eight vacancies. Seventy-seven men were appointed during 1949 and eleven retired on pension. One constable left on a medical certificate and forty constables, two war reserve constables and one first police reserve resigned. Fifty-one clerks, telephonists, wireless operators, matrons, canteen workers and assistants made up the civilian staff. The special constabulary strength was 606. Promotion in the regular force included one inspector to chief inspector, one sergeant to inspector, and two acting sergeants and five constables to sergeants' rank. The average age of the force is thirty-three years and height five feet eleven inches.

The gross total cost of the police for the year ended March 31, 1949, was £330,869, which after deducting the Exchequer Contribution Supplementary Grant and other receipts, leaves a net cost to the city of £142,675, a decrease of £6,134 compared with the previous year.

Indictable offences numbered 3,306, a decrease of 249 on the previous year; forty-three *per cent.* were detected. Nine hundred and thirty-seven persons were prosecuted, of whom 134 were females. Stolen property was valued at £40,752 and that recovered amounted to £9,978; during 1948 the sums were respectively £53,009 and £17,889. Juveniles dealt with for crime totalled 288, including twenty-one females. Fifty-nine juveniles were also found guilty of non-indictable offences.

Street accidents numbered 3,047; there were twenty-three fatalities and 967 people injured. Five children under fifteen were amongst those killed.

There are 824 licensed premises in Bradford, and 153 registered clubs with a membership of 76,190. The police paid 3,445 visits of inspection to licensed houses during the year. Prosecutions were taken against eleven licensees for illegal sales of intoxicants. Offences of drunkenness resulted in 397 males and twenty-eight females being charged before the courts, an increase of ninety as compared with 1948. Twenty males were proceeded against in respect of twenty-nine offences in which their condition was brought about by drinking methylated spirits.

Dealing with housing the report reads: "During 1949, approval was given for the erection of sixteen houses for the occupation of police officers. Houses on corporation estates are to be erected"—a further sixteen dwellings.

37. BOROUGH OF HUDDERSFIELD

The population of the borough is 123,048 and the area 14,147 acres. The Home Office approved establishment is 176 and the actual strength has increased during the year from 147 to 152; in addition twenty-one civilians are employed as clerks, telephone operators, matrons and a storekeeper. There are, included in the strength, three policewomen. Three sergeants and two constables retired on pension, one sergeant was pensioned on account of ill-health and ten constables resigned, six were probationers.

Home Office authorization to appoint forty recruits resulted in twenty-one men being accepted, but as sixteen men left the force, the gain in personnel was only five. "It was anticipated that the recommendations of the Oaksey Committee published in April, 1949, would bring about a greater intake of men . . . but when it is considered that the number of men recruited was seven less than in the previous year, it cannot be said that the desired result has been affected, and the shortage of men in the force is keenly felt. There is in the town keen competition for labour." Of 111 men recruited since the war ended, thirty-six have already left the force. The average age of all members is thirty-two years and height five feet eleven inches.

Four houses have been completed for police occupation. "At the present rate of progress of building, however, police housing is almost at a standstill, and in view of the impetus to recruiting, and the beneficial effect upon morale of the existing members of the force, which would result from more police houses being available, I am sure your committee will wish that nothing should be left undone to increase the rate of progress, in order that the building programme which has already been approved may be completed."

The actual strength of the special constabulary was 107 at the end of the year, two less than in 1948. They have given valuable assistance at public functions in helping to control crowds and traffic.

Indictable offences numbered 835 of which 447 were detected, as compared with 884 crimes of which 567 were detected in 1948. Adults prosecuted for crime totalled 287 and juveniles dealt with for crime numbered 101. Juveniles charged with indictable offences in 1948 numbered 133. The value of property stolen was £14,845 against £14,341 the year before. The property recovered last year amounted to £4,245 and in 1948, £3,558.

Licensed houses total 260 and there are 113 registered clubs with a membership of 49,423. Official visits made by the police amounted to 1,246. Thirty-nine persons were charged with drunkenness, the year before there were thirty-seven. Eight males were prosecuted for being drunk in charge of motor vehicles.

Road accidents caused fifteen deaths and injuries to 325 people. The figures for 1947 and 1948 were respectively fourteen and 283, and six and 336.

Extra duties carried out by the force include issuing 15,360 road fund licences and 14,143 drivers' licences. The number of dog, game, game dealers and gun licences dealt with was 6,999.

LAW AND PENALTIES IN MAGISTERIAL AND OTHER COURTS

No 55

CHEERING NEWS FOR LONDONERS

A taxi driver appeared at Clerkenwell magistrates' court in July, 1950, charged with taking more than the proper fare contrary to s. 17 of the Hackney Carriages (Metropolis) Act, 1853.

For the prosecution, a police sergeant stated that the defendant told a visitor from Scotland that the fare to an address in Brixton would be 25*s*. The driver held out his hand and accepted 25*s*. The distance was just inside the six mile radius and the proper fare was 6*s*. It was conceded that if the distance had been outside the six mile radius the driver could have charged 25*s*.

For the defendant, who pleaded guilty, a solicitor stated that every taxi driver who accepts a tip in London is breaking the law. The learned magistrate (Mr. Frank Powell), expressed surprise and mentioned that in the past, taxi drivers had been brought before him on charges of demanding more than the proper fare.

The learned magistrate imposed a fine of 10*s*. and ordered the defendant to pay £1 7*s*. 4*d*. costs. He added that it was apparent that the police exercised a proper discretion and only prosecuted drivers for taking more than the proper fare in suitable cases.

COMMENT

This report may afford moral support to Londoners who, from time to time, find themselves in unpleasant altercations with ungrateful taxi drivers who do not fail to express themselves clearly when they consider a proffered tip inadequate.

It is provided by s. 17 of the Act that every driver of a hackney carriage who shall demand or take more than the proper fare as set forth in the schedule to the Act shall be liable to a penalty of 40*s*. and in default of payment to imprisonment for one month.

The schedule to the Act which, of course, has been amended on several occasions during the past hundred years, provided for alternate rates according as to whether distance travelled or time occupied was to be the basis upon which remuneration was fixed. The hirer had the option at the commencement of the hiring of selecting the basis and if nothing was said then the fare was to be paid according to distance.

The appropriate rate for a carriage with two or four wheels drawn by one horse was 6*d*. a mile or 2*s*. an hour and for every hackney carriage drawn by two horses an increase in charges of 33 1/3 *per cent*. was sanctioned !

Later the same year, by the Hackney Carriage Duties Act, it was provided that where a London driver was required to drive beyond the circumference of a circle the radius of which was fixed at four miles from Charing Cross, the driver was permitted to charge 1*s*. per mile for every mile he was required to drive beyond the circumference.

R.L.H.

No. 56

A FARMER IN TROUBLE

On July 13, 1950, a thirty-five year old farmer appeared at Market Drayton magistrates' court charged, first, with supplying rationed food for household consumption otherwise than in accordance with the provisions of art. 4 of the Food Rationing (General Provisions) Order, 1949, as read with the Meat (Rationing) Order, 1949, contrary to the said order, and, secondly, with contravention of the provisions of art. 4 (1) of the Livestock (Restriction on Slaughtering) Order, 1947, in that being the owner of a ewe which had been slaughtered pursuant to art. 3 (2) of the said order, he failed to give notice of the slaughtering or to deliver or cause to be delivered the carcase within the time and in the manner prescribed by art. 4 (1) of the Order.

For the prosecution, it was stated that on April 1, 1950, defendant applied for a licence to slaughter one lamb. The licence was granted and the main condition was that the lamb should be consumed solely by members of defendant's family, guests sharing his meals and workers sharing the house.

On April 4, defendant had two sheep slaughtered, the lamb in respect of which the licence had been issued, and a ewe which was a casualty. On the morning of April 5, the defendant fetched half the lamb from the slaughterer's premises, having had it cut into three or four pieces. The quantity taken away by defendant was 21*lbs*., but when inspectors of the Ministry of Food called at defendant's house on the afternoon of April 5, defendant could produce only 4 *lbs*. of lamb and stated that he had given away the remainder, totalling about 17 *lbs*., to friends.

With regard to the ewe which had been slaughtered as a casualty inspectors who visited the slaughterer's premises on the afternoon of April 5, found the carcase of the ewe concealed in the office and cut into two parts. The skin and other parts of the animal were concealed in a shed underneath some boxes of rubbish.

The slaughterer, who was called as a witness, stated that he slaughtered the animals at about 4 *p.m.* on April 4. The carcase of the ewe was not concealed but merely put in a safe place under lock and key. Cross-examined by defendant's solicitor, witness stated that the defendant did not know that the animals had been slaughtered until he called at witness's shop the following morning. When inspectors interviewed witness they told him to do nothing with the carcase of the ewe.

For the defendant, who pleaded not guilty, it was contended that, although he had asked for the animals to be slaughtered, he did not know that their execution was to take place forthwith and he first knew that they had been killed on April 5 at 9 *a.m.* He was engaged all the morning in an official capacity for the Ministry of Food and at an N.F.U. meeting in the afternoon. He had intended to take the carcase of the ewe to the abattoir the following morning, but as the Ministry inspectors had taken charge of the carcase he decided to leave it in their hands and did not report the slaughter to the chairman of auctioneers until the Saturday.

It was contended, on behalf of the defendant, that the Ministry inspectors had visited the slaughterer about twenty-two hours after the slaughter and told him to do nothing further with the carcase until they gave him further instructions ; the defendant had two hours left in which to deliver the carcase to the slaughterhouse but was prevented from doing so by the action of the officials.

The justices, having satisfied themselves that the defendant in fact did not know that the officials had put a ban on the removal of the carcase until long after twenty-four hours had elapsed, decided to convict upon both charges.

The defendant was fined £5 and ordered to pay £1 5*s*. costs upon the first charge and he was fined £3 and ordered to pay £6 6*s*. costs upon the second charge.

COMMENT

Mr. M. T. Sutthery, clerk to the justices, Market Drayton, to whom the writer is greatly indebted for this report, points out that there is a general misconception as to the position arising on the slaughtering of animals in that, because after slaughtering a pig on licence, it is permissible to give away pork people think that they can do the same with sheep. The difference lies in the fact that before obtaining a licence to kill a pig for home consumption bacon coupons have to be surrendered but no coupons are surrendered upon the slaughter of sheep.

In the case referred to above there could, of course, be no excuse for the defendant upon the charge relating to the lamb as the licence which in fact arrived the very morning that he collected the half carcase from the slaughterer, made it clear that only members of his household, etc., were permitted to consume it.

Article 2 of the Livestock (Restriction on Slaughtering) Order, 1947, prohibits slaughtering of animals for human consumption, except by licence.

Article 3 (2) excepts from the provisions of article 2, cases where slaughter is immediately necessary or desirable on account of illness of livestock (and in the case reported above it was alleged that the ewe was very ill).

Article 4 provides that where livestock has been slaughtered pursuant to art. 3 (2) the owner must either give notice of the slaughter within twenty-four hours to the local district chairman of auctioneers or deliver the carcase within twenty-four hours to the nearest Government slaughterhouse.

R.L.H.

PENALTIES

Liverpool—July, 1950—grievous bodily harm—three months' imprisonment. Defendant, a forty-nine year old ship's cleaner, threw a kettle of boiling water over his wife necessitating hospital treatment.

Bristol Quarter Sessions—August, 1950—obtaining meat otherwise than in accordance with the provisions of the Food Rationing Order, 1942—(four charges)—fined a total of £20. Defendant, a sixty-two year old butcher, committed the offences in 1943 and 1945. The offences came to light in 1948 and strong protest was made by the defence at the delay in instituting proceedings.

Bristol Quarter Sessions—August, 1950—supplying meat to last defendant and two other men in contravention of the Food Rationing Order, 1942—(six charges)—fined a total of £150. To pay £50 costs. Defendant treasurer and allocator of a Bristol pork butchers' group.

REVIEWS

Exchange and Borrowing Control. By F. C. Howard. Supplement, 1950. Main Work and Supplement 21s. net Supplement alone 4s. net. London : Butterworth & Co. (Publishers) Ltd.

We did not review *Howard on Exchange and Borrowing Control* when it came out two years ago, being then under the impression that it would be of slight interest to the majority of our readers. Subsequent events, upon which we have commented from time to time in our Notes of the Week, have however shown that offences against the legislation dealing with exchange and borrowing control are far too frequent. Moreover, the legislation is complicated and, whilst much of it deals with what in the present circumstances are *mala in se*, there is some which relates to *mala quia prohibita*. It might thus come into the experience of almost any practising solicitor in any part of the country, to be asked to advise upon these topics. Not only is the temptation to work some fraud upon the revenue only too likely in these days to present itself to persons previously honest, but almost every traveller might inadvertently be guilty of some breach of law. It seems desirable therefore to take the opportunity, of Mr. Howard's producing a supplement to the main work, to call attention to the latter as well as to the supplement. The legislation dealt with in the main work goes back to the Statutory Rules and Orders of 1919 but, otherwise, begins with the outbreak of the second world war. There is a great deal of it, culminating in the Exchange Control Act, 1947. It is as well to point out, also, that the long deferment of peace treaties has left a good deal of the law relating to the law of trading with the enemy still technically in operation, subject to all sorts of provisions in Orders in Council and statutory instruments. Mr. Howard justly points out the confused nature of the law, which has to be obeyed by those concerned and mastered by the lawyer who may be consulted in matters arising out of transactions overseas, which means, in practice, that both the lawyer and his client are very much at the mercy of the official world. We have in another context recently called attention to the same sort of position, existing in other spheres of legislation : it is indeed a feature of modern life and, here, we are only concerned to point out, to any of our readers who might suppose that the law relating to foreign exchanges and overseas trading might be simple, that it is, on the contrary, extremely complicated. It would be difficult for a practitioner who is not a specialist to advise a client adequately, upon the basis merely of obtaining the statutes and referring to the statutory rules and orders and statutory instruments thereunder ; such a practitioner would certainly be in a much better position to advise his client after referring to the notes by Mr. Howard, who has made a special study of the matter. The Supplement of 1950 is upon lines familiar to those who use Butterworths Annotated Legislation Service, and similar publications of the same firm. That is to say, references to the numerals in the left-hand margin of the supplement will show at once what changes in the law have been made since 1948. As will be seen, the main work and the supplement are available together for the modest price of 21*s*.

The book itself is divided into parts, dealing with the main headings of the Exchange Control Act, 1947, and the Borrowing (Control and Guarantees) Act, 1946, the Act of 1947 being put first because its ramifications are a good deal wider. Within each of these main divisions of the book, there are sub-divisions, relating to the position at home and the position arising out of international agreements, with detailed provisions about dealings in gold, foreign currency, securities, and so forth. Before the statutory provisions and the immense mass of subordinate legislation are set out, and duly annotated, there is instructive treatment in narrative form in the text, also a prefatory notice by the learned author, upon the practical matter of corresponding with the Bank of England or with the Exchange Control Office, either directly or through one of the ordinary banks. Apart from these practical matters, the author's historical introduction to the Exchange Control Act, 1947, has a good deal of value, as a brief essay in a little understood branch of economics, and similarly his introduction to the Borrowing (Control and Guarantees) Act, 1946, will give, to those not concerned from day to day with capital issues, a much better understanding of such technical matters than is readily accessible elsewhere. From several points of view, therefore, we can recommend readers who do not already possess the main work to obtain this now, when they can do so with the benefit of the supplement to bring it up-to-date.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Adoption of Children—*Identity of infant—Necessity for evidence—Procedure to be followed.*

Before the passing of the Adoption of Children Act, 1949, the justices had always been advised by the then clerk to require evidence identifying the infant the subject of the application with the birth certificate produced: as it was usual for the infant to be produced at court and for the natural mother to attend and give her consent in person, this usually caused no difficulty. The joint effect of the Act and of the rules made thereunder is to discourage the attendance at court of the natural mother of the infant and, while in her consent to the making of an adoption order she identifies the birth certificate as being the one which relates to the infant of whom she is the mother, this does not of course identify the certificate as relating to the infant in the custody of the applicants. The risk that the justices may make an order in respect of the wrong infant is therefore greater now than it was when the mother usually attended court and I still advise the justices to require evidence that the infant, who is the subject of the application, is the one to whom the birth certificate relates. However, I am informed that other courts do not ask for such evidence and I shall be glad to know whether you can direct me to any authority on the point. JAL.

Answer.

We know of no authority on the point, but, as we said in answer to P.P. No. 1 on p. 216 of this year's volume, the identity of the infant before the court with the child named in the birth certificate must be "proved to the satisfaction of the court" if the infant is to be described as identical with the child named on the certificate. There must be oral evidence as to this, the best evidence being normally that of the mother. We think it is quite reasonable and proper for a court to require such evidence and that it is most important before an adoption order with all its consequences is made for the court to be satisfied as to the identity of the infant.

2.—Criminal Law—*Duplication of offences—Coal Mines Act, 1911 and Coal Mines (Lighting and Contraband) General Regulations, 1949—Smoking a cigarette in a mine—Possible alternative charges.*

I shall be obliged if you will let me have your views on the question of obtaining a conviction on all three of the under-mentioned charges under the Coal Mines Act, 1911. I shall first of all quote to you the two sections and regulations under which the charges are brought and then afterwards deal with the facts giving rise to the charges.

Section 35 (1) of the Coal Mines Act, 1911, as amended by the Coal Mines (Lighting and Contraband) General Regulations, 1949, provides as follows:—

1. "No person in any mine in which safety lamps are required by this Act or the regulations of the mine to be used and no person in any mine to whom a safety lamp is issued for use as a temporary precaution shall have in his possession any article prohibited under this section."

The articles prohibited under this section are contained in subs. (5) of the same section which reads as under:—

"In this section:—'article prohibited under this section' means any cigar, cigarette, pipe or contrivance for smoking and any match or other article that produces or is capable of producing a light, flame or spark, except an article of a description authorized to be taken below ground by this Act or by the Minister of Fuel and Power or the Inspector of the Division; 'temporary precaution' has the meaning assigned thereto by s. 32 of this Act."

The relevant portion of s. 32 of the Coal Mines Act, 1911, requiring the use of safety lamps is subs. 1 (*a*) which reads as under:—

"No lamp or light other than a locked safety lamp or such other means of lighting as is permitted by the regulations of the mine shall be allowed or used in any mine—

(*a*) in any part of which safety lamps were used or required to be used otherwise than as a temporary precaution immediately before the first day of January, 1949, or have been so used on or after that date."

Section 74 of the Coal Mines Act, 1911, reads as follows:—

"Every person shall observe such directions with respect to working as may be given to him with a view to comply with this part of this Act or the regulations of the mine or with a view to safety."

Regulation 28 of the General Regulations reads as follows:—

"No person employed in or about the mine shall negligently or wilfully do anything likely to endanger life or limb in the mine or negligently or wilfully omit to do anything necessary for the safety of the mine or the persons employed therein."

On the assumption that evidence is available to prove the smoking of a cigarette by a miner underground and that he could be found guilty of an offence under ss. 35 and 74 and reg. 28, I should be obliged if you will let me know if these charges should be considered as alternatives or whether they could be considered as separate offences and the accused found guilty of all three. This is the only point I wish you to consider and I am not asking you to go into the question of the proof required to sustain a conviction under the two sections and the particular regulation. I am asking you to assume that all the evidence is available to sustain a conviction under these two sections and the regulation. I have in mind that a motorist who fails to comply with traffic signs can be charged under the Traffic Regulations in addition to being charged with careless driving. These, I understand, are separate offences and not alternative charges. It could be argued with regard to smoking in a pit that there has been a breach of s. 35 in having in one's possession an article prohibited under the section. In addition to such a breach this act of smoking can be considered as an act likely to endanger life or limb in the mine from the point of view of the possibility of a fire or explosion and as such is sufficient to substantiate conviction under reg. 28. Finally smoking in the pit can be considered as a direct breach of instructions given and posted up in the form of notices on the colliery premises.

I am of the opinion that no objection could be taken to a conviction under both s. 35 and reg. 28 as undoubtedly these are two separate offences although they arise out of the same set of circumstances; but with regard to a breach of s. 74 I feel there is some justification in maintaining that this should be treated as an alternative charge it being alternative to a charge under s. 35. It could, for instance, be argued by the defence that the management could publish a general instruction to the effect that everyone should comply with the provisions contained in the Coal Mines Act and in so doing create an additional charge on non-observance thereof. I appreciate that an instruction not to carry into the pit any article of contraband or not to smoke underground is in effect a repetition of s. 35 but could it be argued that a charge under ss. 35 and 74 are separate offences in that one is a breach of s. 35 and the other of a direction given by the management. JEFF.

Answer.

We feel, if there was no cigarette in the man's possession other than the one he was smoking, that the possession and the smoking of it ought not to be made the subject of two charges. When he starts to smoke the cigarette the offence of possessing it becomes merged in the the more serious offence of smoking it.

The charge under reg. 28 seems to us to be the proper one to be preferred. To obtain a conviction on that proof of the possession of the cigarette is automatically involved. Having obtained a conviction for that offence it seems to us to be wrong to seek to prove, on a charge under s. 35, some of the facts already proved under the reg. 28 offence and then to stop short and ask for a further conviction on those same facts.

If the man possessed other cigarettes these could properly form the subject of a charge under s. 35.

We admit that this is a difficult point and not free from doubt, but we think that the doubt should be resolved in favour of a single prosecution rather than of a double one which is open to serious question.

3.—Education Act, 1944—*Rating—Detached room hired for school purposes.*

A county council have entered into a licence for the hire of a room forming part of a church hall for three and a half hours daily for the purpose of serving meals to school children. For reasons which need not now be considered, the premises in which the room is situated were not previously rated. The valuation officer has now given notice of a proposal to assess the room for rates in respect of the use by the county council. The children who will attend for meals are pupils from two voluntary schools, both several hundred yards distant from the room. Section 64 of the Education Act, 1944, provides for the exemption from rates of "the school premises of any voluntary school. It has been suggested that as the county council will have the sole use of the room for certain hours each day, the room will in effect

be part of "the school premises" of the two voluntary controlled schools in question. If this is correct then it follows that the room should be exempt from rates. Do you agree with this proposition?

ALU.

Answer.

There is an element of fact as well as law in a query of this sort, but on the facts here we cannot see much hope of arguing successfully that this hired room forms part of the "school premises of" the school. We should have thought the liability to rating was clear.

4.—Housing Act, 1936—*Closing order* v. *demolition order*

There are a few houses in this area, unfit for human habitation, which form part of blocks of houses. They are either in terraces or semi-detached, but the adjoining properties are all right. It has been suggested to the council that they should make closing orders in respect of these unfit properties (this will ensure their remaining vacant) and that a demolition order should not be made as it obviously could not be enforced. It is argued that the unfit houses, being part of a block of houses, is therefore "part of a building" within the meaning of s. 12 of the Housing Act, 1936, and that the term "building" being wider than "house" can include several houses. I have advised that the unfit property, being a "house" within s. 11 of the Housing Act, 1936, must be dealt with under that section. My argument seems strengthened by the fact that s. 3 of the Housing Act, 1949, would not have been necessary had s. 12 been capable of applying to such cases. I would welcome your opinion on the matter.

A.J.G.

Answer.

We are not sure that we follow the argument based upon s. 3 of the Act of 1949, nor do we see why demolition of a semi-detached house or terrace house could not be enforced. The words "house" and "building" are far from precise; *cf.*, the Public Health Acts and the Rent Restrictions Acts, so that we do not say that a structure could not be both a building and part of building, a house and part of a house. But where a structure is contained between party walls, and separately entered, we agree with our present correspondent that s. 11 of the Act of 1936 is the section which Parliament intended should be used.

5.—Local Government Superannuation Act, 1937—*Clerk's superannuation.*

I recently submitted to you a query as to whether our clerk to the parish council, a non-contributor, was entitled to superannuation, and was favoured with a reply in the negative. Since then I have been considering the provisions of the Act of 1937, s. 11 (1), and the definition of "local authority" under the Local Loans Act, 1875. I shall be glad if you will give your valued opinion as to whether in view of this provision our clerk is entitled to the gratuity referred to in the first mentioned section.

A.CHAIRMAN.

Answer.

Not "entitled"; *i.e.*, there is no right to the gratuity, but the parish council have power to pay the gratuity. It will of course come out of their own funds, not out of the superannuation fund.

6.—Magistrates—*Game Licences Act, 1860—Killing rabbits without a game licence and in contravention of the Poaching Prevention Act, 1862—Can both charges be preferred?*

Game, as defined by the Game Act, 1831, does not include coney and deer, but according to the Game Licences Act, 1860, a person must not take or pursue any game, woodcock, snipe, landrail, coney or deer without a game certificate. If, therefore, a person is proceeded against for an offence under the Poaching Prevention Act, 1862, of killing rabbits, could an additional charge of killing game without a certificate be preferred?

JNO.

Answer.

An additional charge can be preferred. By s. 4 of the 1860 Act a licence to kill game must be taken out before any game *or* any of certain specified birds, *or* any coney or deer is taken, killed, etc.

The offence under s. 4 would be, therefore, that of killing coneys (*not* game) without having duly taken out and having in force a licence to kill game under the said Act.

7.—Road Traffic Acts—*Insurance—Using vehicle whilst uninsured—Effect of provisions of s. 12 of the 1934 Act on persons so using.*

I shall be pleased if you will kindly give me your opinion on the following point of law:—

A solo motor-cyclist collides with a post and sustains serious personal injuries. No other person is involved. Upon perusal of the certificate of insurance, I find that the "limitations as to use" read, "the policy does not cover use for conveyance of passengers, nor use for racing, pacemaking or speed testing, nor use unless a sidecar is attached to the motor-cycle."

I propose taking proceedings against the driver under s. 35 of the Road Traffic Act, 1930, but the question has now arisen, was he driving whilst uninsured in view of s. 12 (*b*) of the Road Traffic Act, 1934?

J.C.C.

Answer.

We dealt with the point involved at 110 J.P.N. 498, P.P. No. 7. In our view s. 12 of the 1934 Act does not protect from prosecution under s. 35 of the 1930 Act a person who uses a vehicle in such circumstances that its use is not specifically covered by a valid insurance policy. Section 12 merely ensures, in the cases enumerated therein, that a third party shall not be left without remedy.

On the facts given by our correspondent it appears that an offence was committed.

8.—Real Property—*Easement—Positive covenant—Maintenance of fence.*

If an easement is created either (1) by express grant or (2) by prescription, can there be created an obligation on either grantor or grantee to repair the subject of an easement so as to be transmissable and binding on the successor of either?

It was stated by Lord Mansfield in *Taylor* v. *Whitehead* (1781) 2 Doug. K.B. 745, that the grantor of an easement may bind himself to repair. Similarly in *Miller* v. *Hancock* (1893) 57 J.P. 758, Bowen, L.J., said that the grantor of an easement may undertake to do repairs either in express terms or by implication. Glanville Williams in *Liability for Animals*, pp. 203-14, expresses the view that an obligation to keep a fence in repair (which he treats in the nature of an easement) may arise from prescription. These views apparently imply that an obligation to repair the subject matter of an easement is transmissable and not merely personal as an easement cannot be created in gross. On the other hand, it is stated in Stroud's *Law of Easements* (1934 edn., p. 15), quoting from authorities "'There can be no easement rendering it compulsory for the servient owner to do something' an easement being a servitude 'with simply the right to claim submission or forbearance.'" *Goddard* (7th edn., p. 26) commenting on the decisions in *Haywood* v. *Brunswick Building Society* (1881) 46 J.P. 356, and *London & S.W. Ry. Co.* v. *Gomm* (1882) 46 L.T. 449, states that a purchaser of land is only bound by restrictive or passive covenants "thus preventing any right, with an active obligation on the servient owner, becoming annexed to land as an easement." This view seems to fit into the general law applicable to covenants that run with land. Thus in Seaborne's *Vendor and Purchaser* (9th edn., pp. 314-5) it is laid down that affirmative covenants, *e.g.*, to lay out money on land or other act of an active character does not run with land except as between landlord and tenant.

Reference in your opinion to authorities will be appreciated.

A.N.S.

Answer.

Seeing that you have yourself pursued the matter through several text-books we can not add much within the compass of this column. Reference in other established books to the cases you cite will throw up further reports, judgments, and dicta, but will not in our opinion lead to a different conclusion. In the first two cases, *supra*, the court said that the grantor could bind himself to do something positive. So he can; the question is whether the something is part of the easement or has he created a separate right. The first two cases you cite do not seem to us to establish that the grantor has attached the obligation to his land by way of easement: indeed in the first of them Lord Mansfield said, at p. 749, that the person entitled to a right of way must himself do such repairs as he requires. We prefer the view that the nature of an easement is the suffering of something (and the name "easement" is then appropriate) which something may be negative (*e.g.*, the weight of superincumbent earth) or positive (*e.g.*, the crossing of the servient tenement by the dominant tenant). You speak of an obligation on the part of the servient tenant to keep a fence in repair: this had, it is true, been admitted by the courts not merely as a personal obligation but as a burden on the servient land. But you have apparently overlooked *Lawrence* v. *Jenkins* (1873) 37 J.P. 357, where this obligation is called "a spurious easement," which seems to support our and your conclusion. You may advantageously peruse our full report of the unanimous judgment of the Queen's Bench in this case; it refers to a number of earlier cases showing that the right exists, but it is an anomalous survival of mediaeval land law for which a special writ occurs in *Fitzherbert*.

OFFICIAL ADVERTISEMENTS, TENDERS, ETC. (*contd.*)

CITY AND COUNTY OF BRISTOL

Appointment of Male Probation Officer

APPLICATIONS are invited for the appointment of a whole-time Male Probation Officer for the City and County of Bristol.

The appointment and salary will be in accordance with the Probation Rules, 1949, and the successful applicant will be required to pass a medical examination.

Applicants must be not less than 23 nor more than 40 years of age, except in the case of whole-time serving probation officers or persons who are otherwise qualified for appointment under the Probation Rules.

Applications, stating age, experience and qualifications, together with copies of not more than three recent testimonials, must be sent to reach the undersigned not later than Monday, September 18, 1950. Envelopes should be endorsed "Appointment of Male Probation Officer."

A. J. A. ORME,
Clerk to the Justices.

Petty Sessional Court House,
Bristol 1.

HORNCHURCH URBAN DISTRICT COUNCIL

Appointment of Legal Assistant

APPLICATIONS are invited for the appointment of a Legal Assistant at a salary in accordance with Grade IV of the National Scale of Salaries (£480 × £15 to £525 per annum).

Applicants should possess a good knowledge of conveyancing.

Forms of application may be obtained from me, and should be returned so as to be received not later than Saturday, September 16, 1950.

P. L. COX,
Clerk of the Council.

Council Offices,
Billet Lane,
Hornchurch.
August, 1950.

THE LANCASHIRE (NO. 1) COMBINED PROBATION AREA

Female Probation Officer

APPLICATIONS are invited for the above whole-time appointment. The Area comprises the County Borough of Barrow-in-Furness and the Petty Sessional Divisions of Lonsdale North of the Sands and Hawkeshead. Applicants must be not less than 23 and under the age of 40 years, except in the case of serving whole-time probation officers or persons who have satisfactorily completed an approved course of training.

The appointment and salary will be subject to and in accordance with the Probation Rules, 1949, and an allowance of £100 per annum in connection with the use of the officer's own car will be paid. The post is superannuable and the successful applicant will be required to pass a medical examination.

Applications, stating age, qualifications and experience, together with copies of three recent testimonials, must reach the undersigned not later than September 30, 1950.

JOSEPH WILLIS,
Clerk of the Combined Area Committee.

Magistrates' Clerk's Office,
Market Street,
Barrow-in-Furness.

COUNTY BOROUGH OF MIDDLESBROUGH

Appointment of Senior Probation Officer (Male)

APPLICATIONS are invited for the appointment of a male Senior Probation Officer.

Applicants must be serving full-time probation officers.

The appointment will be subject to the Probation Rules and the salary will be according to the scale prescribed by those Rules, plus allowance under Rule 61.

Applications, stating age, present position, qualifications and experience, together with copies of not more than three recent testimonials must reach me not later than the first post on September 22, 1950.

THOMAS BELK,
Clerk to the Probation Committee.

Municipal Buildings,
Middlesbrough,
Yorks.

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